



**MEMO**

***City of Sioux City***

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**TO :** Public Retirement Systems Committee

**FROM :** James L. Abshier, City Attorney

**DATE :** November 8, 2007

**RE :** Chapter 411 Iowa Code

The purpose of this memo is to request consideration of a bill that would correct what I believe is an error in the original legislation setting up the board of trustees for the statewide fire and police retirement system, Acts and Joint Resolutions, 1998 Regular Session, 77GA, Chapter 1183.

Iowa Code section 411.15 provides, "Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of the cities, when injured while in the performance of their duties as members of such department, and shall continue to provide hospital, nursing, and medical attention for injuries or diseases incurred while in the performance of their duties for members receiving a retirement allowance under section 411.6, subsection 6."

This requirement was in the "old" Chapter 411 and was modified by the new legislation in a manner not germane to this issue.

Iowa Code section 411.22(1) provides, "If a member receives an injury or dies for which benefits are payable under section 411.6, subsection 3, 5, 8, or 9, or section 411.15, and if the injury or death is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the retirement system is subrogated to the rights of the member or the member's beneficiary entitled to receive a death benefit and may maintain an action for damages against the third party for lost earnings and lost earnings capacity. (Emphasis added.) This was only slightly modified in 1998 and the amendments are not germane to the discussion.

Prior to 1998, the "retirement system" was the individual city retirement system but under the 1998 amendments is now the statewide "retirement system." I believe this fact was overlooked during the preparation of the amendments to make the change over to the statewide system. No provisions were made to keep the subrogation rights for medical and hospital expenses with the individual cities. The subrogation rights stayed with the "retirement system" which is now defined as the statewide retirement system. The inequity lies in the fact that the obligation to pay medical bills is imposed on the individual cities but the subrogation rights belong to the "retirement system." Obviously, the subrogation rights for these expenses given to the retirement system are valueless because they would never have such an expenditure to make under the terms of the present law.

Attached is a proposed bill that would give the city paying the medical bills, the right to subrogation in the event there is a third party responsible for the injuries to the fire fighter or the police officer.

I respectfully request consideration of the attached bill or similar legislation that would give the subrogation rights to the property entity.

AN ACT TO AUTHORIZE A SUBROGATION CLAIM BY A MUNICIPALITY FOR  
THE MEDICAL EXPENSES PAID TO AN INJURED POLICE OFFICER OR FIREFIGHTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA;

Section 1. Section 411.22, subsection 1, first paragraph, Code 2007, is amended to read as follows:

1. If a member receives an injury or dies for which benefits are payable under section 411.6, subsection 3, 5, 8, or 9, ~~or section 411.15~~, and if the injury or death is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the retirement system is subrogated to the rights of the member or the member's beneficiary entitled to receive a death benefit and may maintain an action for damages against the third party for lost earnings and lost earnings capacity. If the retirement system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

Section 2. Section 411.22, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 5(a). If a member receives an injury for which benefits are payable under section 411.15, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the city paying the hospital, nursing or medical payments or who is otherwise obligated to make such payments is subrogated to the rights of the member or the member's beneficiary entitled to receive these payments and may maintain an action for damages against the third party for the payments required to be made under section 411.15. The city may authorize the retirement system to collect the hospital, nursing or medical payments on behalf of the city if the retirement system maintains an action for damages as authorized by section 1 above and distribution shall be after payment of the expenses in 1(a),(b) and (c).

(b) If the city, after receiving written notice of the third-party liability, declines in writing to maintain an action against the third party or fails to maintain an action within one hundred eighty days of receiving written notice of the third-party liability, the member, the member's estate, or the legal representative of the member or the member's estate, may maintain an action for damages against the third party. If such an action is commenced, the plaintiff member, estate, or representative shall serve a copy of the original notice upon the city not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the city, and the following rights and duties ensue:

i. The city shall be indemnified out of the recovery of damages to the extent of hospital, nursing and medical payments paid by the city, with legal interest, except that the plaintiff member's or estate's attorney fees may be first allowed by the district court

c. The city has a lien on the damage claim against the third party and on any judgment on the damage claim for hospital, nursing or medical payments made by the city or for which the city is liable. In order to continue and preserve the lien, the city shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

#### EXPLANATION

This bill authorizes a subrogation claim by a city against a third party legally liable for the medical, nursing and hospital expenses incurred by a police officer or a firefighter injured while on duty. The code grants the subrogation rights to the retirement system but the obligation to pay for these expenses is by law imposed on the municipality employing the injured police officer or firefighter. The city's subrogation claim applies if the member or the member's estate initiates an action against the third party. The city may authorize the retirement system to collect the medical payments made by it if the retirement system maintains a suit for the retirement benefits paid by it.